



## Attorney General of New Mexico

**GARY K. KING**  
Attorney General

**ALBERT J. LAMA**  
Chief Deputy Attorney General

September 11, 2008

M. David Chacon II  
Assistant Bernalillo County Attorney  
520 Lomas Blvd NW 4<sup>th</sup> Floor  
Albuquerque NM 87102

**Re: Determination of Inspection of Public Records complaint - Eric Griego**

Dear Mr. Chacon:

Thank you for responding to my request for information regarding a complaint from Eric Griego of Albuquerque alleging that the Bernalillo County Treasurer's Office ("Treasurer") violated the Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 through 14-2-12 (2005), with regard to his October 23, 2006 requests to inspect public records. I have reviewed Mr. Griego's complaint and your March 7, 2008 response to this Office. As discussed below, it appears that the Treasurer violated the IPRA by his failure to permit inspection of the nonexempt portion of the requested records or to provide a written explanation of denial.

On October 23, 2006, Mr. Griego verbally requested a copy of a check used to pay the taxes assessed for a particular property, then made a written request for the same check, specifying the property by an identification number. Mr. Griego received no written response from the Treasurer regarding these requests, nor was he permitted to inspect the requested records.

The IPRA requires the Treasurer to timely and appropriately respond to Mr. Griego's October 23, 2006 written request to inspect public records. Specifically, Section 14-2-8(D) requires a custodian to permit inspection:

*immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request.*

(Emphasis added.) The Treasurer's failure to timely respond in writing to Mr. Griego's written request to inspect violated Section 14-2-8(D). Mr. Griego's written request, clearly identified as

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an IPRA request, triggered the Treasurer's obligation to respond in some fashion in writing unless inspection was permitted within three business days after the Treasurer's records custodian received Mr. Griego's request. Id.

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If a written request to inspect is denied, the records custodian must issue a written explanation of the denial within fifteen days after receiving the request. Section 14-2-11(B). Failure to timely permit inspection or issue a written explanation of denial may result in legal action against the public body and its custodian to enforce the IPRA. Section 14-2-11(A), (C).

Your response stated that you believe Mr. Griego requested records that include personal financial account information that is not subject to inspection. You cite several state statutes<sup>1</sup> supporting your characterization of this personal financial account information. I agree that the statutes you cite constitute exceptions to the right to inspect encompassed by Section 14-2-1(A)(12) (every person has the right to inspect any public records except "as otherwise provided by law").

You also stated that "[p]erhaps a copy of the check redacting the confidential portion(s) would be sufficient for purposes of satisfying Mr. Griego's request(s)," adding that "there are two (2) checks which are responsive to Mr. Griego's request." This proposed response to Mr. Griego's requests would rectify the Treasurer's IPRA violations, and fits squarely within the IPRA's procedures for allowing inspection once the records custodian has redacted those portions of the requested records that are not subject to inspection.

Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the *nonexempt information shall be made available for inspection.*

Section 14-2-9(A) (emphasis added).

Your proposal to redact confidential information from the two checks that are responsive to Mr. Griego's October 23, 2006 requests to inspect, and to make the public, nonexempt information available for his inspection, is a solution that comports with the specific requirements of the IPRA. I suggest you communicate with Mr. Griego as to when the nonexempt portion of the requested records will be available for his inspection and provide a copy of that communication to our office. With such inspection permitted, I believe the Treasurer will remedy his IPRA violations.

In conclusion, although the Treasurer violated the IPRA with regard to Mr. Griego's October 23, 2006 oral and written requests to inspect public records, you have proposed an appropriate

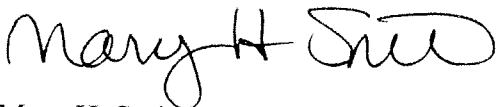
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<sup>1</sup> NMSA 1978, Sections 14-3-2(F), 14-3-7.1(A)(1), 30-16-24.1.

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resolution. I also encourage the Treasurer to obtain the Attorney General's Inspection of Public Records Act Compliance Guide (5<sup>th</sup> ed. 2008) (available online at [www.nmag.gov](http://www.nmag.gov)). Under these circumstances, further action by this office is not necessary and, once we have received a copy of your communication with Mr. Griego regarding inspection, we will close our file on Mr. Griego's complaint. Thank you for your response to my inquiry. If you have any additional questions, please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mary H. Smith". The signature is fluid and cursive, with the first name "Mary" being the most prominent part.

Mary H. Smith  
Assistant Attorney General

xc: Eric Griego  
Patrick J. Padilla, Bernalillo County Treasurer  
Albert J. Lama, Chief Deputy Attorney General  
Phil Sisneros, Attorney General's Communications Director